COPY

(1)

Supreme Court, U.S.
FILED

97 1168 JAN 12 1998

No.

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

In the Matter of

LAWRENCE CRAWFORD BRAGG

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

LAWRENCE C. BRAGG
15454 East Gale Avenue
Hacienda Heights, Ca. 91745-1500

1-626-961-0511

Petitioner Attorney *Pro Se*

4/4/pp

QUESTIONS PRESENTED

1. Is the addition of new charges of commission of a crime and aiding the commission of a crime after the completion of an attorney disciplinary proceeding which is based on the testimony of the attorney such a denial of due process of law and violation of this Court's decision in **In re: Ruffalo** that the petition should be entertained to void a one year actual suspension of a thirty four year practicing attorney who has no prior record?

2. When a decision has four substantial new charges added at the review level without notice and the original charges not addressed, should not this Court entertain the Petition to provide due process for an attorney?

3. Is the absence of recusal remedies for State Supreme Court Justices a violation of due process of law?

4. Is a State Supreme Court which appoints employees to a private party, and by finding against the other party obtains monies for their appointees' employer to reimburse their appointees' salaries and benefits, a lack of

a fair and impartial adjudicator?

5. Is the administrative decision-making by one who obtains monies to recoup his salary and benefits and those of his co-employee prosecutors and investigators for his private employer and other funds for his employer's private projects from each accused he finds guilty a lack of a fair and impartial adjudicator?

6. Is the employment, housing, training, providing of staffs, facilities, expenses, offices, pay and benefits to a judge by a privately financed party such a position of dependence on a party that such a judge is required to be recused from the party's cases?

LIST OF PARTIES

The parties are as follows:

LAWRENCE C. BRAGG
15454 East Gale Avenue
Hacienda Heights, Ca. 91745-1500

1-626-961-0511

Petitioner Attorney ***Pro Se***

MARIE F. MOFFAT
RICHARD ZANASSI
YVONNE JARAMILLO
OFFICE OF GENERAL COUNSEL
THE STATE BAR OF CALIFORNIA
555 Franklin Street
San Francisco, Ca. 94102

1-415-561-8200

Respondent State Bar of California

TABLE OF CONTENTS

Page

Questions Presented.....i

List of Parties.....iii

Introduction.....1

I. Orders Below 4

II. Jurisdiction.....5

III. Constitutional and Statutory Provisions Involved.....5

IV. Statement of the Case.....6

V. Reasons for Granting the Writ.....10

A. There Were Four Changes and Additions of New Charges after the Completion of Trial 10

1. The Finding of Aiding the Commission of the Crime of Unauthorized Practice of Law which was added after the Fact Violates Due Process of Law 12

2. The Finding of Moral Turpitude Of Commission of a Crime was Unnoticed 17

3. The Competence Claim was Changed from not Serving One Defendant to a Multitude of Other Claims Based on the Testimony of the Attorney 21

4. There was no Notice of the Subpart of the Competence Rule Claimed to Have been Violated 24

B. The Absence of Judicial Recusal Remedies Concerning A State Supreme Court Poses Due Process Problems 28

C. A State Supreme Court which is a Partisan for a Prosecuting Party poses Dangers concerning The Licensing of a State's Attorneys 29

D. Administrative Adjudicators Selected, Hired, and Employed by a Party is A Lack of a Fair and Impartial Adjudicator 30

E. Administrative Adjudicators Selected, Hired, and Employed by a Party which is The Exclusive Financial Beneficiary of Findings Against Accuseds denies a Fair and Impartial Adjudicator 31

Conclusion 32

Table of Authorities

Cases

Aetna Life Insurance Company v. La Voie 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988) 2,29

Armstrong v. Manzo 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d. 62 (1965) 21

Blockburger v. United States 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306, 309 (1932) 19

Burlington Northern v. Department of Revenue 934 F.2d. 1064 (9th Cir. 1991) 29

Carey v. Piphus 435 U.S. 247, 259, 98 S. Ct. 1042, 1050, 55 L. Ed.2d. 252 (1978) 26

Gentile v. State Bar of Nevada 115 L. Ed. 2d. 888, 111 S. Ct. 2720 (1991) 25

Goss v. Lopez 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d. 725 (1975). 25

In re: Gault 387 U.S. 31, 34, 18 L. Ed.2d. 527, 87 S. Ct. 1428 (1967). 25,26

In re: Ruffalo 390 U.S. 544, 20 L. Ed. 2d 117, 88 S. Ct. 1222 (1968) 2,9-11,20,22,24,32

Jordan v. De George 341 U.S. 223; 71 S. Ct. 703; 95 L. Ed 886 (1951). 18

Mathews v. Eldridge 424 U.S. 319, 332, 96 S. Ct. 893, 901, 47 L.Ed. 2d. 18 (1976). 26

Matter of Ross 656 P. 2d. 832, 838, 99 Nev.1 (Nev. 1983). 32

Monte Vista Lodge v. Guardian Life Ins. Co. Of America 384 F.2d. 126, 129 (9th Cir. 1967) 19

Spevack v. Klein (1967) 385 U.S. 511, 37 S. Ct. 625, 17 L. Ed. 574 16

Sunshine Anthracite Coal Co. v. Adkins 310 U.S. 381, 60 S. Ct. 907, 84 L. Ed. (1940) 29

United States v Daddano (1970, CA7 Ill) 432 F2d 1119, cert dismd (1971) 401 US 967, 28 L Ed 2d 250, 91 S Ct 990 and cert den (1971) 402 US 905, 28 L Ed 2d 645, 91 S Ct 1366 . . 16

United States v. Raddatz 447 U.S. 667, 100 S. Ct. 2406, 65 L. Ed.2d 424 (1980) 29

Ward v. Village of Monroeville 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed.2d.267 (1972) 30

United States Constitution

Amendment XIV 5

California Constitution

Article 6, section 1 5
Article 6, section 9 6

United States Statutes

27 U.S.C.A. s. 1257(3). 5

///

California Business and Professions Code

Section 6079.1 6
Section 6079.5 6
Section 6086.5 6
Section 6086.10 6
Section 6086.65 6
Section 6106 6,17,18
Section 6126 16
Section 6140.7 6

California Rules of Professional Conduct

Rule 1-300 15,20
Rule 1-310 14,15,17
Rule 1-320. 14,15,17
Rule 3-110(A) 22,25

Books and Articles

The California State Auditor, May, 1997 report, "The State Bar of California: Opportunities Exist to Reduce Fees, Better Control Administration and Planning, and Strengthen an Improved Discipline Process" 3

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

In the Matter of

LAWRENCE CRAWFORD BRAGG

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioner Attorney respectfully prays that a writ of certiorari issue to review the judgment of the California Supreme Court, Case No. S062861, entered on December 10, 1997.

Said judgment did not address the petitioner's motion for recusal and denied a Petition for Review. Said judgment is identical to that already prepared and submitted for signature by the California Supreme Court's appointees to the State Bar of California. Appendix A.

Indicative of the lack of opportunity for review, the summary judgment was prepared before the attorney filed his motion for recusal and petition for review. As such, it never addressed the motion for recusal nor the merits of the petition for review. The order was already prepared before the attorney filed for review.

The Petitioner is an attorney at law for thirty four years. He has no record of discipline imposed upon him.

The summary judgment at issue imposes a one year actual suspension of the petitioner's license to practice law. Appendix A.

This Petition is filed to address the lack of conformity with this Court's decision in **In re: Ruffalo** 390 U.S. 544, 20 L. Ed. 2d 117, 88 S. Ct. 1222 (1968) concerning notice to an accused attorney and this Court's decision in **Aetna Life Insurance Company v. La Voie** 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988) concerning the requirement of a fair and impartial adjudicator within a State Supreme Court.

On October 12, 1997 the Governor of the State of California vetoed the bill authorizing the State Bar of California to collect mandatory dues from its compelled members. He stated it was "over bloated, arrogant, irresponsible, and unresponsive," with an appearance of impropriety in its functions.

With the defunding of the 103 million dollar budget of the State Bar of California, findings of culpability of accused attorneys is essential. Such findings assess the salaries and benefits of the State Bar's judge, prosecutor, investigator, and staff upon each attorney found culpable of public discipline. This sum for the three years, 1992-1995, exceeded sixteen million dollars.[1] The judges whose salaries and benefits are assessed against the attorney are the appointees of the California Supreme Court to the State Bar of California. Said appointees are paid

---

1

Sixty million dollars has been vetoed since the active 120,000 attorneys were required to pay $478.00 a year in annual dues. Inactive attorneys were required to pay approximately $75.00 a year. The California State Auditor, May, 1997 report, "The State Bar of California: Opportunities Exist to Reduce Fees, Better Control Administration and Planning, and Strengthen an Improved Discipline Process," at 10, revealed that the State Bar assessed in excess of sixteen million dollars for itself from findings of culpability for the years 1992 through 1995.

their respective $130,000 and $150,000 salaries plus their perks from such sums, now that mandatory dues assessed by the State Bar of California have been vetoed.

Indicative of this substantial financial interest for its appointees to the State Bar of California, the California Supreme Court imposed said sums upon the petitioner and made said sums payable as mandatory dues. Appendix A. That sum is $4,314.00. Appendix E-8.

I.

ORDERS BELOW

The summary judgment of the California Supreme Court prepared by the State Bar of California which did not address the motion for recusal and which denied the Petitioner's Petition for Review and which entered an order of an actual one year suspension on the Petitioner is reproduced at Appendix A.

"State Bar" hereinafter refers to the State Bar of California. Unless otherwise indicated, "Sections" refers to sections of the California Business and Professions Code.

"Rules," unless otherwise indicated, refers to the California Rules of Professional Conduct.

II.

JURISDICTION

The jurisdiction of this Court is involved under 27 U.S.C.A. s. 1257(3). This Petition for writ of certiorari is timely filed within ninety days of the order of the Supreme Court of California on December 10, 1997. Appendix A.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment XIV: "No State shall .... deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Constitution

Art. 6, sec.1: "The judicial power of the State is vested in the California Supreme Court, the Courts of Appeal, the Superior Courts, and the Municipal Courts."

Art. 6, sec. 9: "The State Bar of California is a public corporation...."

State Statutes:

The state statutes at issue are California Business and Professions Code sections 6079.1, 6079.5, 6086.5, 6086.10, and 6086.65(a), 6106, and 6140.7. They are set forth at Appendix F.

IV.

STATEMENT OF THE CASE

The California attorney disciplinary system is composed of hearing and review department judges, prosecutors, investigators and staff employed by the State Bar of California. The entity before whom the matter is heard is an office within the State Bar of California. It is called the State Bar Court of the State Bar of California. Its judges, like it prosecutors, are employees of the State Bar of California. They are paid from the private revenues of the State Bar. Those funds included mandatory dues. On October 12, 1997 the Governor of the State vetoed the bill authorizing the State Bar to collect

mandatory dues. Revenues are presently dependent on findings of culpability of accused attorneys and private projects and sales.

In 1989, 1994, and 1995, the California Supreme Court appointed a total of fifteen employees to the State Bar. Their appointees are denominated judges of the State Bar's Court. The hearing judges appointed are required by statute to be paid $130,000 base salaries. The review department judges who are attorneys are required to be paid base salaries of $150, 000 a year. The one lay review department judge is paid $75,000 a year. There are five hearing judges. There are three review department judges. Two are lawyers and one is a non-lawyer.

Since its appointment of employees to the State Bar in 1989, the California Supreme Court has declined to grant review to any accused attorneys. Its appointees to the State Bar prepare the California Supreme Court's summary order. This summary order for the signature of the Chief Justice of the California Supreme Court is prepared and sent with the appointees' transmittal to the California Supreme Court of its

recommendation as to discipline. Appendix E. As in this case, any petition and motion submitted by the accused attorney to the California Supreme Court is not addressed. The summary order is already prepared for immediate signature before the accused attorney files anything. The filings of the accused attorney are ignored and never addressed. Appendices A, B, and C.

There were four changes of the charges and additions of new charges after the completion of the trial in petitioner's case. A moral turpitude charge which was never noticed and upon which the judgment depended was added in the review department after completion of oral argument. A new claim of commission of a criminal act as an aggravating factor was added without notice after the completion of proceedings in the review department. The lack of competence claim was changed in the review department from that which was noticed to something completely different. And there was no identification of what subdivision of the competence rule was the one at issue. As set forth in the attorney's petition for review filed with the California

Supreme Court, "This reckless abandon of the due process rights of accuseds is inspired by the knowledge that there is no judicial review ever permitted of what the Review Department of the State Bar's Court does. This has led to an unbridled license within it to change the proceedings in any way they want without notice."

The defective notice resulted in findings based on claims never made violates the first principal of due process: an accused is entitled to fair notice of the claims. This Honorable Court has stated that an accused attorney is entitled to notice of the charges against him at the commencement of proceedings. **In re Ruffalo,** 390 U.S. 544, 20 L. Ed. 2d 117, 88 S. Ct. 1222 (1968).

The petitioner respectfully requests that this Honorable Court address the violation of the Supremacy Clause occasioned by the taking of a vested license to practice law of thirty four years by way of findings based on unnoticed and altered charges.

The petitioner respectfully requests that this Honorable Court also address the significant and substantial United States

Constitutional issue of what relationship between a judge and a party disqualifies the judge from participation in a case.

V.

REASONS FOR GRANTING THE WRIT

A. There Were Four Changes and Additions of New Charges after the Completion of Trial

As held by this Court in **In re Ruffalo, supra**, at 551, "The charge must be known before the proceedings commence."

In that case one of the grounds of disbarment of the attorney was the attorney's employment of one Orlando as an investigator. That was not included in any charge made prior to the disbarment hearing. This is identical to the situation here. Attorney Ruffalo was not aware that it would be considered as a disbarment offense until after both he and Orlando testified on all aspects of that phase of the case. This Honorable Court held that the disbarment proceedings "become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh. How the charge would

have been met had it been originally included in those leveled against petitioner . . . no one knows... This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process."

The majority in **In re Ruffalo**, 390 U.S. 544 (1968) held that a change in the charges against the petitioner during proceedings before the Ohio Board of Commissioners violated due process. The feature of that case that was particularly offensive was that the change was such that the very evidence put on by the petitioner in defense of the original charges became, under the revised charges, inculpatory. Thus, in that case, the original charges functioned as a "trap," id., at 551, for they lulled the petitioner into presenting evidence that "irrevocably [assured] his disbarment under charges not yet made." Id., at 551, n. 4.

The situation is identical herein. The attorney and the person involved in the claims of a partnership with a non-lawyer and sharing fees testified as to their arrangement and their intent. It was this testimony that led to the changing of charges, adding

of charges, and new claims of commission of a crime resulting in the disposition and punishment of a one year actual suspension. It was the attorney's candid testimony that resulted in an abandonment of the original lack of competence claim and the addition of multiple, unnoticed new claims in lieu thereof.

1. The Finding of Aiding the Commission of the Crime of Unauthorized Practice of Law which was added after the Fact Violates Due Process of Law

The attorney admitted entering into a contract with a pre-litigation professional contract company for nine months. That contract permitted the attorney to have a professional company investigate cases, obtain medical records, police reports, and witness statements on his personal injury cases. This permitted the attorney to have all of the required information when he proposed settlement offers. It helped him to decide whether litigation was necessary in a particular case. The professional staff of the prelitigation company, supervised by the attorney, would discuss settlements with insurance companies in an effort to avoid litigation. Once it became apparent that a case could not

be settled upon reasonable terms, the case was removed from the pre-litigation group of cases, and the attorney handled the filing and follow-through with the litigation personally.

Pre-litigation contracts are currently in active use in Southern California. They expedite and avoid unnecessary litigation. The attorney's time and energy is better utilized on behalf of clients. The pre-litigation group does not become involved once litigation is commenced. The pre-litigation group focuses on preparing each case for an excellent settlement and making every effort to have cases promptly resolved.

The payment terms were agreed to be a percentage of the net profits from the settlements after the deduction of office expenses. While the fee-splitting charge was based on the attorney's ignorance and his belief that the deduction of office expenses from the compensation paid insulated the payment terms, there was no charge that the attorney committed a crime or aiding in the commission of a crime.

Count two of the Notice of Disciplinary Charges alleged

that "you hired Bruce Hickman to assist you with your office management problems. Bruce Hickman was not an attorney licensed to practice law.... You operated out of an office in Hacienda Heights, and Hickman operated out of an office that he rented from an attorney named Arthur Ackerman... You agreed to share office expenses with Ackerman since you had clients in Ontario as well as Hacienda Heights. You did work out of both offices. You entered into an arrangement with Hickman whereby Hickman was paid a percentage of the income from all of the cases settled by Hickman, after deducting the office expenses of each of the offices.... You entered into and maintained a partnership with a non-attorney, and you shared legal fees with a non-attorney. You committed the above-described acts in willful violation of your oath and duties as an attorney under disciplinary case law and/or California Business and Professions Code section 6106, and Rules of Professional Conduct 1-310 and 1-320." Appendix D-5.

The review department of the State Bar's Court found

that, "... we do not find that respondent entered into a partnership with Bruce Hickman... We find in aggravation that respondent violated current rule 1-300 in aiding a non-lawyer to engage in the practice of law." Appendix B-3.

The Notice did not allege a violation of rule 1-300.[2] It alleged a violation of rules 1-310 and 1-320.[3]

The new charge of aiding the unauthorized practice of law which was added after the completion of the trial denied a fair hearing and a fair procedure. Had Hickman and the attorney been apprized in advance that the State Bar's judges would change the charges and add new ones in lieu thereof after the proceedings were completed based on their respective testimonies

---

2

Rule 1-300(A) provides, "A member shall not aid any person or entity in the unauthorized practice of law."

3

Rule 1-310 provides, "Forming a Partnership with a Non-Lawyer," that "A member shall not form a partnership with a person not licensed to practice law if any of the activities of that partnership consist of the practice of law." Rule 1-320 provides," Neither a member nor a law firm shall directly or indirectly share legal fees with a person or entity not licensed to practice law..."

concerning their agreement, both persons would have exercised the privilege not to testify concerning those matters.[4]

The new added charge of aiding the unauthorized practice of law accuses the attorney of aiding the commission of a crime[5] and of committing the crime of aiding the commission of a crime.[6]

Both witnesses were surprised to learn that the proceedings had been completely changed. The addition of a claim that Hickman was a criminal who had committed a crime which the attorney aided and that the attorney was now a criminal himself was now the new basis for the findings.

Hickman had no day in court. He had no jury trial. He

---

4 This Court's decision in **Spevack v. Klein** (1967) 385 U.S. 511, 37 S. Ct. 625, 17 L. Ed. 2d. 574 states that the privilege against self-incrimination is applicable in attorney disciplinary proceedings.

5 Section 6126 states that any person practicing law who is not an active member of the State Bar is guilty of a misdemeanor.

6 Whether the crime is viewed as accessory before or after the fact, the findings accuse the attorney without notice, trial, or opportunity to be heard, of committing a crime. See **United States v Daddano** (1970, CA7 Ill) 432 F2d 1119, cert dismd (1971) 401 US 967, 28 L Ed 2d 250, 91 S Ct 990 and cert den (1971) 402 US 905, 28 L Ed 2d 645, 91 S Ct 1366, 1399.

had no constitutional court of law. He had no constitutional judge. There was no adjudication by a court of law that Hickman engaged in the unauthorized practice of law. The petitioner also had no day in court on the issue. How could the petitioner be found to have aided a non-event? And without notice of such a charge?

2. The Finding of Moral Turpitude Of Commission of a Crime was Unnoticed

Count two of the Notice to Show Cause asserted that the same facts that constituted a violation of rules 1-310 and 1-320 concerning forming a partnership with a non-lawyer and sharing fees with a non-lawyer also constituted an act of moral turpitude violation. It stated that, "You entered into and maintained a partnership with a non-attorney, and you shared legal fees with a non-attorney. You committed the above-described acts in willful violation of your oath and duties as an attorney under disciplinary case law and/or California Business and Professions Code section 6106, and Rules of Professional Conduct 1-310 and

1-320." Appendix D-5

Section 6106 states that "the commission of any act involving moral turpitude, dishonesty or corruption... constitutes a cause for disbarment or suspension."

This Honorable Court has addressed the due process problem inherent in the term "moral turpitude." This Honorable Court has held it generally applies to acts of fraud or dishonesty. **Jordan v. De George** 341 U.S. 223; 71 S. Ct. 703; 95 L. Ed 886 (1951).

The totem poling of multiple charges from the same acts is a pervasive problem. Many of the statutes, such as the act of moral turpitude statute, are one hundred and twenty four years old. They are vague, indefinite, and undefined by case law. They predate this Court's decisions concerning fair notice requirements.

The lack of adherence to this Court's criteria that specific statutes supplant general ones and that duplicative charges are not permitted is evident in the double and triple charging involved

herein. The two distinct prohibitions on fee-splitting and forming a partnership with a non-lawyer are double charged by claiming that the two separate violations form a third violation, to wit, an act of moral turpitude.[7]

Neither separate offense involves fraud or dishonesty nor do they constitute fraud or dishonesty placed together. However, the finding was that the attorney did not form a partnership with a non-lawyer, thereby excising fifty percent of the claim of an act of moral turpitude. The finding therefore would rest exclusively on the fee-splitting claim, which was a separate violation found. This would be an impermissible duplication of the same charge. The solution was to stretch the proceedings beyond their noticed parameters to, once again, change the charge after the fact.

Instead of the noticed claims, the findings operate to find no partnership and instead change, without notice, the claim of

---

[7] See **Blockburger v. United States** 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306, 309 (1932). "The priority of specific over general provisions is a basic principle of statutory construction. **Monte Vista Lodge v. Guardian Life Ins. Co. Of America** 384 F.2d. 126, 129 (9th Cir. 1967), cert. denied 390 U.S. 950, 88 S. Ct. 1041, 19 L Ed. 2d. 1142 (1968)."

moral turpitude to something completely different. It claims that, "The State Bar has charged respondent with commission of acts of moral turpitude... To properly evaluate this charge we look to the acts .....shown by the record that would constitute aggravation." It is axiomatic that, after trial, **In re: Ruffalo, supra**, does not permit the charge to be changed from the one noticed to a new and completely different one as was done here. It is also axiomatic that the court may not make up a new charge after the fact of trial by claiming as does the decision that,"Although not charged, the record is reviewed to determine if respondent is culpable of aiding a person or entity in the practice of law in violation of current rule 1-300(A)."

This complete change of the charge and addition of a new charge after the fact is especially egregious as this finding, without notice or trial, indicates that the moral turpitude charge was required to be dismissed. But instead of dismissing it, the review department of the State Bar's Court made up a new charge of aiding the commission of a crime and committing one.

That the attorney was found culpable of a criminal offense never prosecuted or noticed by altering the charges to add a new charge of "aiding the unauthorized practice of law," and the moral turpitude charge was also changed from forming a partnership and fee- splitting with a non-lawyer to the new claim of committing a criminal offense and aiding a criminal in committing a crime is due to the lack of any possibility of any constitutional court supervision or control over the State Bar and its court. There is no effective or unbiased court access.

Petitioner was denied, at every stage, and in multiple respects, his due process and equal protection rights under the fourteenth amendment to a "meaningful opportunity to be heard in a meaningful manner" as required under **Armstrong v. Manzo** 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d. 62 (1965).

3. The Competence Claim was Changed from not Serving One Defendant to a Multitude of Other Claims Based on the Testimony of the Attorney

Petitioner contends that the State Bar's failure to give him

fair notice of the precise competence charge leveled against him in the disciplinary proceeding worked a violation of due process, see **In re Ruffalo**, 390 U.S. 544 (1968).

The review department decision states that the Petitioner, "failed to make claim on her purported insurance, he took no action to prosecute Harmon's case other than file a complaint and the first amended complaint, he caused no independent discovery, and he failed to cause service to [sic] made in such a manner to prevent a motion for discretionary dismissal. Petitioner argues that as early as September 1990 he concluded that Harmon's case was not meritorious. In spite of that he remained counsel of record and performed some services until September 1991. Following our de novo review we conclude that respondent is culpable of violating current rule 3-110(A)."

These claims were not contained in the notice served on the Petitioner. Appendix D-2-D-4. They were added after the attorney testified and was asked questions beyond the scope of the Notice. They were added after the trial was concluded and

the matter presented for review to the review department. [8]

The Notice to Show Cause alleged that the lack of competence was that, "following the substitution of the respondent out as the attorney of record in September, that three to four months later, in December of 1993, the court dismissed a defendant from the case for failure to serve it within two years of the commencement of the action. You failed to perform the legal services for which you had been hired." Appendix D:2-3:1-16. The dismissal was the result of the successor attorney's inaction. The petitioner was not the attorney of record.

It was the testimony of the attorney that was used to make up a new charge after the trial was concluded. This is identical to the **Ruffalo** situation. Refer footnote 8.

The decision claims that the lack of competence is completely different from the noticed claim. The Petitioner was not

---

[8] It was the cross-examination beyond the scope of direct that elicited the claims now made as the attorney was asked whether he filed an at issue, conducted discovery, interviewed witnesses, issued a demand letter, hired an outside accident reconstruction expert, as to which the Petitioner replied that he did not recall. TR:VII:2: 22-25, 3:1-9.

permitted to know of such claims. He was not permitted to rebut them. He was not permitted to offer expert witness testimony on each of the issues before the findings were made and the proceedings concluded. Identical to in **In re:Ruffalo, supra,** this only arose after the Petitioner testified with no knowledge such testimony would be proposed to be the new, unnoticed charges upon which culpability would be based. Refer footnote 8.

This lack of proper notice requires as in **In re: Ruffalo, supra,** that the finding of a lack of competence be excised and voided for lack of due process of law, and the judgment voided for lack of due process of law.

4. There was no Notice of the Subpart of the Competence Rule Claimed to Have been Violated

The competence rule does not cover simple negligence. In order for a disciplinary offense to be pled and found, the rule requires that the failure to perform with competence be done

recklessly, repeatedly, or intentionally. [9] The notice served on the Petitioner did not specify whether it was claimed the act was done intentionally, repeatedly, or recklessly. Appendix D-2-D-4.

The review department decision repeats this flaw by making no finding of what subpart is claimed to have been violated. It just concludes that there is a violation of the rule. It identifies no subpart claimed to have been violated. Appendix B-37-B-39.

This Honorable Court has stated that an attorney is entitled to fair notice of the facts relied on in support of the charges, so he may prepare and defend. **In re: Gault** 387 U.S. 31, 34, 18 L. Ed.2d. 527, 87 S. Ct. 1428 (1967), **Gentile v. State Bar of Nevada** 115 L. Ed. 2d. 888, 111 S. Ct. 2720 (1991), **In re: Gault** 387 U.S. 31,18 L.Ed.527, 87 S.Ct.1428 (1967). Part of the function of notice is to give the charged party a chance to marshal the facts in his defense and to clarify what the charges are in fact. See **In re Gault, supra,** at 33-34, and n. 54 (1967).

9

California Rules of Professional Responsibility Rule 3- 110(A), entitled "Failing to Act Competently," states, "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

Procedural due process rules were meant to protect persons not from a deprivation, but from the mistaken or unjustified deprivation. **Carey v. Piphus** 435 U.S. 247, 259, 98 S. Ct. 1042, 1050, 55 L.Ed.2d. 252 (1978). Thus, they impose constraints on government action. **Mathews v. Eldridge** 424 U.S. 319, 332, 96 S. Ct. 893, 901, 47 L.Ed. 2d. 18 (1976).

An accused must be given written notice informing him of the specific issues that he must meet, at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation. **In re: Gault, supra**, at 31-34.

In the instant case, the one year actual suspension of a thirty four year practicing attorney who has no prior complaints or record operates as a *de facto* disbarment of his right to practice his profession. It does so based on a record indicating a results oriented decision. The charges were changed when it became clear that exoneration of the accused attorney was the appropriate disposition of all of the charges except for perhaps the fee-splitting claim. This would have warranted a reproval.

Instead, the attorney is labeled a criminal who aided a criminal in his commission of a crime. He is labeled an unfit attorney who is guilty of moral turpitude on new unnoticed claims. He is labeled an incompetent attorney. His claimed incompetence is based on claims for which there was no notice, evidence, opportunity to rebut, or opportunity to present evidence.

These reputation destroying labels are published throughout the state by the non-lawyer and two lawyers in the State Bar who changed all of the charges without notice.[10]

Not only is there no notice of the actual charges and no opportunity to defend, but the first notice of the new charges that an attorney has is when the attorneys and judges in his State read them as findings of guilt of the attorney in the daily newspaper the next day before the attorney receives his copy of the decision. With alarm and horror the attorney discovers that the non-lawyer

---

10 Appendix B-1 indicates the State Bar's review department certified its decision for publication. This caused the decision to be published as if it were a court decision when it was solely a recommendation for the California Supreme Court in the **Los Angeles Daily Journal** legal newspapers and in all of the legal newspapers throughout the State.

and two lawyers in the State Bar changed all of the charges, added crimes, and made findings of the commission of crimes and of moral turpitude and of incompetence that were never noticed, discussed, nor addressed.

B. The Absence of Judicial Recusal Remedies Concerning a State Supreme Court Poses Due Process Problems

The Motion for Recusal of the California Supreme Court Justices which was filed with the Petition for Review on September 16, 1997 was not acted upon. It is hereinafter attached at Appendix C.

Since the California Supreme Court's orders are already prepared by the State Bar and sent with its transmittal of its recommendation to the California Supreme Court, nothing filed by an attorney requesting review or recusal of the members of the California Supreme Court is considered or acted upon by it. Appendices A, C, and E.

Since the judgment was already prepared before the attorney filed anything, it did not address the motion for recusal of the

members of the California Supreme Court. Appendix A.[11]

The lack of statutes, rules, or constitutional provisions permitting recusal of a State Supreme Court judge in the California system poses the problem that a party has no procedural remedy to assure a fair and impartial adjudicator within its State Supreme Court.

C. A State Supreme Court which is a Partisan for a Prosecuting Party poses Dangers concerning The Licensing of a State's Attorneys

Based on this Court's statement that the test is whether the situation offers a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clean, and true between the State and the accused, **Aetna Life**

11

This Honorable Court has held that an unlawful delegation of judicial power occurs when a person other than the judicial officer entrusted with the judgment makes the judicial decision. See **United States v. Raddatz** 447 U.S. 667, 100 S. Ct. 2406, 65 L. Ed.2d 424 (1980), **Sunshine Anthracite Coal Co. v. Adkins** 310 U.S. 381, 60 S. Ct. 907, 84 L. Ed. (1940). In **Burlington Northern v. Department of Revenue** 934 F.2d. 1064 (9th Cir. 1991), at 1073, when a judge "delegated the judicial decision making function as to the entire case...." to a non article III judge, this was held to be the unlawful delegation of judicial power to a non-judge.

Insurance Company v. La Voie 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988), is not a situation where a State Supreme Court appoints employees to a prosecuting party, which is privately financed, and where by having it prepare its orders in advance of any filing by the accused attorney, it has delegated its judicial powers to it, and summarily denies all issues of all accused attorneys, and orders monies paid as "costs" to reimburse the party for the salaries and benefits of not only its appointees to a party, but for their co-employees as well, such a situation of temptation to not hold the balance nice, clean, and true, that recusal of the California State Supreme Court Justices was and is required?

D. Administrative Adjudicators Selected, Hired, and Employed by a Party is A Lack of a Fair and Impartial Adjudicator

Pursuant to this Court's holding in **Ward v. Village of Monroeville** 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed.2d.267 (1972), even if there were neutral review by the State Supreme Court, the fact that the adjudicatory proceedings in the lower levels lack a

fair and impartial adjudicator denies to a party fundamental due process of law. A party has a constitutional right to a fair and impartial adjudicator in the first instance, *de novo* review being irrelevant.

Is not the employment, housing, training, providing of all staff, expenses, facilities, pay, expenses, and benefits for a judge by a privately financed party appearing before the judge such bias that the petitioner was denied a fair and impartial adjudicator at the hearing and review department levels within the state system?

E. Administrative Adjudicators Selected, Hired, and Employed by a Party which is The Exclusive Financial Beneficiary of Findings Against Accuseds denies a Fair and Impartial Adjudicator

Three layers of awards are imposed on adjudged guilty attorneys: the salaries and benefits of the judge and his co-employee prosecutor and investigators, sanctions to fund the State Bar Client Security Fund, and forced enrollment in sections, examinations, schools, classes owned and run by the State Bar. The State Audit reveals those sums in three years exceeded

sixteen million dollars. Refer footnote 1. Is the amount important or the existence of the financial interest?

Proceedings conducted by members of a Board of a State Bar Association wherein they desired to recoup the Association's investigative costs by finding guilt of accuseds and imposing those costs upon the adjudged guilty attorneys were voided for lack of due process of law. **Matter of Ross** 656 P. 2d. 832, 838, 99 Nev.1 (Nev. 1983).

Conclusion

The multiple constitutional violations of the notice requirements in this case are far more serious than those in **Ruffalo, supra**. They suggest a course of conduct of violation of the Supremacy Clause of the United States Constitution that is endemic resulting from the privatization of attorney discipline within a financially interested party.

An attorney of thirty four years with a blemish-free record should be entitled to access to his licensing court to present his constitutional issues and have them considered and addressed.

The fact that the judgment was written before the attorney filed anything and was written by the party to whom the California Supreme Court has appointed employees is indicative of a partisanship within the California Supreme Court which should be addressed and remedied.

The employees of a party who sit as its judges faced with defunding and lay-offs appears to be so result-oriented that findings are made with no charges and charges are changed and new charges added after the fact. This appears to be done to justify the imposition of substantial discipline on an attorney who presents constitutional issues about the validity of this system and whose honest mistake about his fee-splitting arrangement must be escalated into findings of the commission of a crime, of aiding a criminal in his commission of a crime when he had no trial, of criminal misconduct, of corruption, dishonesty, and moral turpitude, and of incompetence.

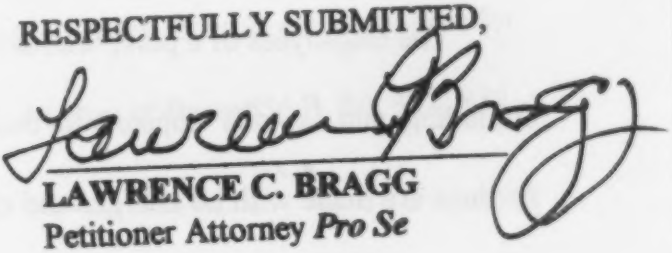
Due to the significance of the notice and partisanship issues, the petitioner respectfully requests that this Honorable Court

entertain this petition for a writ of certiorari.

By reason of the irreparable harm to the attorney's thirty four year reputation, law practice, and career, a Stay of proceedings should be granted pending this Court's final review.

RESPECTFULLY SUBMITTED,

Dated: January 7, 1998



LAWRENCE C. BRAGG
Petitioner Attorney *Pro Se*

Verification

I have read the foregoing Petition for Writ of Certiorari to the Supreme Court of the State of California and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 7th day of January, 1998 at Los Angeles, California.

RESPECTFULLY SUBMITTED,

Dated: January 8, 1998

LAWRENCE C. BRAGG
Petitioner Attorney *Pro Se*